

**SHOREVIEW PLANNING COMMISSION
MEETING MINUTES**

October 27, 2009

CALL TO ORDER

Chair Proud called the meeting of the October 27, 2009 Shoreview Planning Commission meeting to order at 7:01 p.m.

ROLL CALL

The following members were present: Chair Proud, Commissioners Feldsien, Ferrington, Mons, and Solomonson.

Commissioner Wenner arrived late and Commissioner Schumer was absent.

APPROVAL OF AGENDA

MOTION: by Commissioner Mons, seconded by Commissioner Feldsien to approve the agenda as submitted.

ROLL CALL: Ayes - 5 Nays - 0

APPROVAL OF MINUTES

MOTION: by Commissioner Mons, seconded by Commissioner Ferrington to approve the September 22, 2009 Planning Commission meeting minutes as submitted.

ROLL CALL: Ayes - 5 Nays - 0

REPORT ON RECENT CITY COUNCIL ACTIONS

City Planner Kathleen reported that the site and building plan review for the Maintenance Center was approved at the October 5th City Council meeting. An open house for the project was held last weekend and the project is on schedule.

NEW BUSINESS

VARIANCE

FILE NO. 2372-09-30
APPLICANT: KAREN ENGEN
LOCATION: 5580 WOOD DUCK COURT

Presentation by Senior Planner Rob Warwick

A variance is requested to reduce the required 10-foot side setback to 4.9 feet for a single story addition to the existing two-story home. The property is zoned R1 with City-owned property to the north and Turtle Lake School to the east. The City property is mostly wetland and is part of the storm water management system. The addition would be a 14.5 by 18-foot addition on the rear of the house for a new main floor bedroom. One landmark tree will be removed, and one replacement tree is required.

The applicant states the new bedroom is needed because of the health of her husband and his inability to use stairs. The layout of the interior of the house would only allow the addition at the location proposed.

Due to the public ownership of the outlot to the north, this property line is not radial to the cul-de-sac. The City has the required frontage for access to the stormwater infrastructure, and has no plans for any future construction. The proposed encroachment at the northeast corner into the setback is a result of the orientation of the existing house. The majority of the addition is in compliance with the 10-foot setback requirement. The City-owned property to the north will not be developed so the impact of this proposal is reduced. The addition will be 38 feet from the rear lot line, which will not impact the abutting school parking area.

Property owners within 150 feet of the parcel were notified of the application. One written comment of support was received. Staff is recommending approval.

(Commissioner Wenner arrived after Mr. Warwick's presentation.)

Commissioner Ferrington asked if the encroachment would impact the adjacent school property. Mr. Warwick noted that the existing home is 33 feet from the property line and the addition will be 38 feet. There are also plantings and a fence between the properties.

Commissioner Solomonson asked if consideration was given to purchasing a sliver of land, five additional feet from the City to make the addition a conforming structure. He asked if that small piece of land is wetland. Mr. Warwick stated that piece is not wetland, but the process would be a longer time frame and a much more expensive project for the applicants. A wetland delineation would be required.

Ms. Karen Engen, Applicant, stated that her property is at a considerably lower elevation than the school property. The school erected a fence and put in trees. On the school side of the property line it is impossible to see the house on the other side.

MOTION: by Commissioner Wenner, seconded by Commissioner Feldsien to adopt Resolution 09-88 approving the variance request to reduce the 10-foot minimum side setback to 4.9 feet for an addition at 5580 Wood Duck Court, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Variance application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. One landmark tree will be removed and one replacement tree is required.
4. This approval is subject to a 5-day appeal period. Once the appeal period expires, the required building permit may be issued for the proposed project.

The approval is based on the following findings:

1. The addition for a main floor bedroom represents a reasonable use of the property.
2. The interior configuration of the existing house, location of the house on the lot, and abutting underdeveloped public property on the north are unique and were not created by the homeowner.
3. The proposal will not alter the character of the neighborhood due to the minor nature of the encroachment.

Discussion:

Commissioner Solomonson stated that he will support the variance because of the adjacent City property to the north and because the topography does not give the appearance that there is a variance setback between the two properties.

VOTE: Ayes - 6 Nays - 0

VARIANCE

FILE NO. **2370-09-28**
APPLICANT: **JOHN WITTHAUER**
LOCATION: **436 MAPLE LANE**

Presentation by City Planner Kathleen Nordine

This variance request is for encroachment into the front 30-foot setback to construct an 8 by 32-foot stoop/walkway (deck) on the existing house. The request is for a reduced setback of 22 feet. This property is a sub-standard non-conforming lot zoned R1, Detached Residential. Although proposed as a walkway, as proposed it is defined as a deck in City Code.

The applicant states that due to deterioration of the existing stoop and walkway that is no longer safe, the proposal is to replace it. There is a school bus stop in front of the home so safety is critical. Hardship exists due to the age of the neighborhood, which consists largely of smaller homes, close yards, narrow streets and garages located at street edge.

The home is a split-level design that was built in 1974. Other properties in the neighborhood have similar front setbacks. Staff finds that there is hardship due to the fact that the property is a substandard lot. The lots in this neighborhood are smaller. The stoop and walkway are in need of replacement. The condition of the sidewalk is such that it is a danger to the school children who wait at this location for the school bus. The new structure would be at the same setback as the existing sidewalk with visual impact minimal. The character of the neighborhood will not be changed. Staff is recommending approval. Ms. Nordine noted that one condition of approval is that the stoop/deck not be covered in the future.

Property owners within 150 feet were notified of the proposal. Four comments in support were received.

Commissioner Solomonson asked the height of the deck and whether there is a need for a railing. Ms. Nordine stated the height is approximately 10 inches. There is no need for a railing.

Chair Proud opened the discussion to public comment.

Mr. John Witthauer, Applicant, stated that he believes the deck system will help water infiltrate into the ground rather than running off a concrete walkway.

Commissioner Mons noted that replacement of the sidewalk as is would not require a variance.

MOTION: by Commissioner Mons, seconded by Commissioner Solomonson to approve the variance request submitted by John and Kim Witthauer to reduce the setback from the front lot line from 30 feet to 22 feet to allow construction of a 8 by 32-foot stoop/walkway located at 436 Maple Lane and adopt Resolution 09-94, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the variance application. The stoop/walkway (deck) shall maintain a minimum setback of 22 feet from the front lot line. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. The stoop/walkway (deck) shall not be roofed or enclosed without an amendment to this variance

3. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
4. This approval is subject to a 5-day appeal period. Once the appeal period expires, a building permit may be issued for the proposed project. A building permit must be obtained before any construction activity begins.

VOTE: Ayes - 6 Nays - 0

VARIANCE

FILE NO.: **2373-09-31**
APPLICANT: **ROBIN RAYGOR**
LOCATION: **444 MAPLE LANE**

Presentation by City Planner Kathleen Nordine

The applicant recently expanded the driveway for his recreational vehicle storage. The expanded driveway extends to the side property line. The variance request is to reduce the side setback from the required 5 feet to 2 feet with modification to the driveway to comply with the 2 feet.

This matter was brought to the City's attention last summer through a complaint about the parking of the recreational vehicle on the applicant's property. Upon investigating, staff found that the recreational vehicle was being parked on the lawn west of the driveway and within the 5 feet of the side and front property lines. Mr. Raygor was notified of the violation, which he corrected.

A second complaint was received in September, when staff found that the driveway had been expanded to the property line without a permit from the City. The vehicle was parked within the 5-foot setback. The applicant would like to keep the added parking area and proposes to put in 2 feet of plantings along the property line.

The property has a lot width of 97 feet and depth of 99.43 feet. The driveway is approximately 18 feet wide and 40 feet long. The expanded portion is a combination of asphalt and Class 5 gravel. The asphalt is 3 feet from the property line.

The applicant states that hardship is present because of the character of this older neighborhood with non-conforming lots, structures and driveways. Within the neighborhood recreational vehicles and utility trailers are often parked within 1 to 3 feet of a property line. When his property was platted, it had 100 feet in width. However, 3 feet was divided from his property for additional building room on the adjacent property. If his width had been left at 100 feet, there would be no need for a variance.

Staff finds that the applicant does have reasonable use of his property. While it may be inconvenient to access the garage with the recreational vehicle parked in the driveway, that does

not justify hardship. The required 5-foot setback is intended to provide open space and drainage and mitigate driveway use impact to the adjacent property. Other options would include expansion to the east, which would require removal of landscaping and a fence or to store the vehicle off-site. The variance request is based on the need for storage, not a result of unique characteristics of the property. The width of 97 feet exceeds the minimum standard width of 75 feet for residential properties, and the existing driveway is large enough to park the recreational vehicle.

In reviewing records of variances and code enforcement in this neighborhood, staff found that 11 of the 34 non-lakeshore properties have received setback variances for garage additions, house additions and new home construction. Six non-lakeshore properties have non-conforming driveway setbacks from a side property line. Two code enforcement cases regarding storage of commercial vehicles have been corrected since 2000.

Property owners within 150 feet were notified of the application. Five written comments were received—3 in support and 2 opposed. Staff is not recommending approval. The parking situation with the RV does not create hardship. Unique circumstances are created by the applicant. The existing driveway is double width and adequate. Although the neighborhood is older with smaller lots, this does not create hardship.

Commissioner Wenner expressed concern about blocking visibility from the street and asked the dimensions of the RV vehicle and the setback needed to park in the driveway. Ms. Nordine answered that the length of the RV is 35 feet. The parking requirement is 5 feet from the front lot line.

Commissioner Ferrington noted that there is space to expand the driveway to the east if the existing fence were removed. Ms. Nordine agreed but stated that there would not be sufficient room in that area to park the RV vehicle without removing landscaping and changing the main pathway from the garage to the house.

Commissioner Solomonson noted that the property was platted at 100 feet, but 3 feet were later taken to add to his neighbor's property.

Chair Proud opened the discussion to public comment.

Mr. Robin Raygor, Applicant, stated that he has parked an RV and/or boat in the driveway for many years. In complying with City Code, he is then prohibited from parking their second car in the garage, and visibility is limited when backing out of the garage. He parked the RV a couple of feet off the driveway to allow full use of the garage. When he was notified he was not in compliance, he believed it was because the RV was not parked on an asphalt or concrete surface. He then hired a contractor to extend the driveway and left town for the summer only to come back and find another notice of non-compliance. He would prefer not to have to dig up the driveway. He believes the limited use of his garage is a hardship. The RV looks better when it is tucked into the yard and it is safer. His lot is exactly the same depth as his neighbor, which

also causes hardship. The lots are substandard width and substandard depth. The neighborhood has odd-shaped, substandard, small lots. The streets are not at right angles. Adjacent neighbors encroach into the setbacks between their properties and his. He noted one objection from the neighbor across the street, which he believes to be a result of the realtor telling her that her house might sell easier if the RV were not parked across the street. In previous years there were no complaints from this neighbor, which means that the objection is not where the RV is parked, but that it exists. The lot across the street has asphalt to the lot line with vehicles parked within 3 feet of the property line. These kinds of things happen all over the neighborhood. To say only he has to be in compliance with City Code is not fair. To extend the driveway the other direction would destroy landscaping that has been developed over the last 20 years with lilacs, forsythia, burning bush and other shrubs. It would also give the appearance that the RV is parked in the middle of his front yard. It could be parked off-site and it is when they are travelling eight months of the year. However, when they are home, he needs to do cleaning, recharge batteries and make needed repairs. He would like hardship to be defined in the same way for his request as for others. Besides support for the application, the petition also requests restraint on the part of the City in enforcing compliance in the neighborhood as a whole.

City Attorney Filla noted that hardship is defined in the Code as not having reasonable use of the property, the situation is not self-created, and the variance would not change the character of the neighborhood. Economic hardship is not a factor in granting a variance. Other variances do not have a bearing on this application. Four votes are needed for approval.

Mr. Witthauer stated that the RV does not at all obstruct visibility of traffic on Maple Lane. The RV is gone more than it is on the property and he would hope the Commission would approve the variance.

Commissioner Solomonson stated that he agrees with staff that there is no hardship because there is room to park the RV in the driveway. The loss of the use of one stall of the garage is the applicant's choice. It is difficult because of the variety of setbacks used in the neighborhood that do not conform. He would consider leaving the driveway if it is a hardship to remove it, but the RV definitely should be parked 5 feet from the property line. He asked if the two variances could be separated. Ms. Nordine stated that two variances are requested, one for a driveway three feet from the property line and one for the RV to be parked three feet from the property line, but leaving the driveway and requiring the RV to be parked 5 feet from the property line would be difficult to enforce.

Commissioner Mons stated that the Commission has discussed different zoning for certain neighborhoods that have a hard time complying with the Code. This neighborhood might be one to be considered. The problem with this variance request is that hardship is caused by a situation created by the applicant. He suggested that if the applicant were going to be gone for a time, there might be enough time for the City Council and Planning Commission to discuss a zoning change. He would support tabling the matter for further discussion.

Chair Proud stated that he believes there are other solutions, such as architectural changes,

removing the fence and reducing the size of the courtyard to increase the driveway on the other side and bring the property into compliance rather than ask for a variance.

Commissioner Ferrington stated that she cannot see hardship, but she is sympathetic with the neighborhood. There may be creative solutions, but the letter of the law states there must be hardship. She does not believe the variance is supportable based on the information provided and would support a motion to deny.

Commissioner Wenner stated that he finds it difficult to support this variance because there is no hardship. The applicant has reasonable use of the property. While he is sympathetic, he has not heard anything that is compelling to support the variance.

Commissioner Feldsien stated that there is not a safety issue with the location of the driveway and direction of traffic on Maple Lane. While he can see what other commissioners are saying, a homeowner should have efficient use of the garage. Removing the fence, moving landscaping and changing architecture may be alternatives, but they are extensive and not as feasible as granting this variance. He agreed with Commissioner Mons' suggestion to table for further discussion.

Commissioner Feldsien asked if the review period could be extended. Ms. Nordine stated that there can be an extension up to 120 days for a stated reason. City Attorney Filla added that usually an extension would be to obtain information that has not been presented.

Chair Proud noted that the 60-day review period would mean a decision would have to be made by December 11th.

Commissioner Mons asked if consideration of zoning would be a reason. He noted past moratoriums for certain areas and suggested a moratorium on enforcing certain setback requirements. City Attorney Filla explained that moratoriums are usually to address an ongoing planning effort. It is the City Council who has to make a decision about a moratorium. It would be difficult to accomplish a major zoning change within 120 days, which would require legislation by the City Council. Further, to set a moratorium on enforcement of setbacks a citation would have to be issued. The applicant has indicated he can comply with the Code, but it is inconvenient. If the applicant is leaving, there will be a number of months to deal with this issue. Ms. Nordine stated that if denied, staff would work with the applicant on a reasonable time schedule to bring the property into compliance.

Mr. Raygor responded that except for this meeting, he would have already left until next April. He would plan to attend the City Council meeting if he has to appeal, but he will not be here if the matter is extended for 120 days.

MOTION: by Commissioner Wenner, seconded by Commissioner Ferrington to deny the variance request submitted by Robin Raygor, 444 Maple Lane, reducing the required 5-foot side yard setback for a driveway to 2 feet and permit the parking

of a vehicle 2 feet from the side property line and within the required 5-foot setback from a front property line based on the finding hardship is not present. The applicant has reasonable use of the property with the existing single-family home, garage and driveway. There are no unique characteristics of the property and the variance is created by the applicant's storage needs. The granting of the variance does not uphold the spirit and intent of the ordinance.

VOTE: Ayes - 3 (Proud, Ferrington, Wenner)
 Nays - 3 (Feldsien, Mons, Solomonson)

MOTION: by Commissioner Mons, seconded by Commissioner Feldsien to lay this matter over to the November Planning Commission meeting, when there is the potential for a full Planning Commission to be present.

Discussion:

However, the applicant would not be able to attend that meeting and Commissioner Ferrington will be absent from the November meeting, which could mean another 3/3 vote.

MOTION WITHDRAWN: Commissioner Mons withdrew his motion to table. Commissioner Feldsien consented.

Commissioner Mons suggested reconsideration of the original motion. City Attorney Filla explained that reconsideration of a motion is initiated by a winning side of the previous motion, which did not occur.

Commissioner Ferrington suggested splitting the two variances so as not to force the issue of removing the driveway and buy some time for further discussion.

Commissioner Mons suggested that since the applicant is leaving town, he could withdraw the application to give the Commission time to further discuss these issues. If the applicant is out of town, there is not an enforcement issue. He would not want to split the two variances.

The applicant indicated that he would be leaving in November for the winter.

Chair Proud asked if enforcement of the setback can be deferred. City Attorney Filla stated that if the Planning Commission or City Council request further information pending final resolution, he believes the City Manager, who is the chief law enforcement officer of the City, would hold off on Code enforcement.

MOTION: by Commissioner Mons, seconded by Commissioner Solomonson to lay this matter over to the next regular Planning Commission meeting in November.

VOTE: Ayes - 5 Nays - 1 (Wenner)

Chair Proud called a 10-minute recess and reconvened the meeting at 9:05 p.m.

PUBLIC HEARING - TEXT AMENDMENT - ADMINISTRATION OF ESCROW DEPOSITS - CHAPTER 203

City Attorney Filla stated that appropriate notice has been given and the public hearing is in order.

Presentation by Senior Planner Rob Warwick

The proposed amendment would provide for replenishment of surety should the city use funds to correct conditions on a development site. There has not been a problem to date, but staff believes it would be prudent to amend the Code to apply to future projects. The purpose of this amendment is to insure the amount of surety is maintained at the stipulated amount for the duration of the project.

Notice of this public hearing was published in the City's legal newspaper. No comments have been received.

The amendment would affect Sections 203.035, Grading Permit and Section 203.080(B) Erosion Control Agreement.

Chair Proud opened the public hearing. There were no comments or questions.

MOTION: by Commissioner Mons, seconded by Commissioner Feldsien to close the public hearing.

VOTE: Ayes - 6 Nays - 0

MOTION: by Commissioner Mons, seconded by Commissioner Ferrington to recommend the City Council approve the text amendments to Chapter 200 of the Municipal Code pertaining to the administration of escrow deposits for erosion and sediment control.

The recommendation is based on the following findings:

1. The City's 2008 Comprehensive Plan and 2005 Surface Water Management Plan identify erosion and sediment control as an important facet of pollution prevention, reducing phosphorous discharge to surface waters, and retaining capacity of the storm water management infrastructure of the City.
2. The City's National Pollutant Discharge Elimination System (NPDES) and Storm Water Pollution Prevention Plan (SWPPP) require strong regulation of erosion and sediment control.

3. The City establishes the escrow deposit amount by Ordinance. The proposed amendments will insure the escrow is maintained at that amount for the duration of the project.

VOTE: Ayes - 6 Nays - 0

MISCELLANEOUS

City Council Meetings

Commissioner Wenner and Chair Proud will respectively attend the November 2nd and November 16th City Council meetings.

November/December Meetings

It was the consensus of the Commission to hold the regular Planning Commission meetings on the regular meeting dates for November and December, November 24th and December 22nd.

Text Amendment - Electronic Signs

Mr. Warwick stated that current Code does not allow electronic changeable message signs, unless for public or quasi public use. Staff was directed by the Council to look at a text amendment that would more equitably treat public and commercial uses. Issues identified by staff include display area, legibility, brightness, how quickly sign messages should change, spacing, and approval process. Should certain zoning districts allow electronic signs, or should the measure be the setback from residential, which staff believes should be the consideration.

The Commission reviewed and commented on each section of the amendment.

Sign and Display Area

Commissioner Mons questioned the size of a 75 square-foot display area and asked for examples of signs that are that large. For businesses like Target, which are set back quite far, he would like to know what is being considered for placement of such a sign for those businesses. Mr. Warwick stated that buildings consisting of 100,000 square feet or more would be the only ones that would qualify for a sign with a 75 square foot display area. Examples would be the Shoreview Mall or Deluxe building. As for placement, there is no maximum setback, only a minimum setback of 5 feet from the property line.

Text Size and Legibility

Chair Proud and Commissioner Solomonson expressed concerns about the use of graphics. In previous workshop discussions, only text messages were discussed. Both commissioners would be willing to consider allowing graphics.

Commissioner Ferrington offered reference materials that show using lighted characters against a dark background is harder to read. The literature she has shows the opposite to be true. Mr. Warwick responded that this provision was taken from the Manual for Uniform Traffic Control Devices. He will look further into related literature and requested the references Commissioner Ferrington cited.

Brightness

Chair Proud questioned the use of “sudden” in the first sentence. Static brightness can also be distracting.

Commissioner Feldsien asked if there is a standard for brightness. Brightness is measured in “nits”, which are candelas per square meter. Mr. Warwick stated that although there is not an industry standard, 5,000 nits is a common maximum during the day and 500 nits at night. He noted the provision in the Minnetonka Code that was recently adopted that requires arbitration if the City determines a sign is overly bright. It is important for the Code to be reasonable and defensible. It was the consensus of the Commission to request a copy of Minnetonka’s ordinance for review.

Duration

Commissioner Mons stated asked if the 8-second minimum duration is a standard, as he thought it was 12 seconds. He suggested allowing fading messages, as they might be less distracting than an abrupt change. Mr. Warwick stated that 8 seconds duration is used in codes across the country and in traffic safety literature.

Commissioner Solomonson noted that the current Code allows message changes every 1 to 2 hours. He does not see the need to change every 8 seconds for people just driving by.

Sign Placement and Spacing

Commissioner Mons asked if there would be a different policy in a heavily commercial area than what would be allowed closer to residential areas, such as on Highway 96 going west. Mr. Warwick stated that message signs are not to be seen from a principal residential structure. A certain distance between signs may be required, but the number of signs would not be restricted.

Chair Proud suggested that other “complex or challenging road locations” would be near traffic control signs and bus stops.

Commissioner Mons suggested talking to adjacent communities to see if some collaboration might be possible.

Sign, Video Display

Chair Proud cautioned about being too specific with changing technology. City Attorney Filla responded that the more specific the ordinance is defined the better and easier it will be to enforce. He would recommend cross references to existing standards wherever possible.

Construction and Lighting

Chair Proud suggested brightness be defined as additional brightness to the brightness of the ambient light under Section 208.030(B)(10).

Text Amendment - Infill and Redevelopment

MOTION: by Commissioner Mons, seconded by Commissioner Feldsien to lay this matter over to the next Planning Commission meeting.

VOTE: Ayes – 6 Nays - 0

ADJOURNMENT

MOTION: by Commissioner Mons, seconded by Commissioner Solomonson to adjourn the October 27, 2009 Planning Commission meeting at 10:02 p.m.

VOTE: Ayes - 6 Nays - 0

ATTEST:

Kathleen Nordine
City Planner